

ENTERED

December 20, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

VIRGIL L. JONES,

Plaintiff,

VS.

CANDACE MOORE, *et al*,

Defendants.

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CIVIL NO. 2:19-CV-90

ORDER

The Court is in receipt of Magistrate Judge B. Janice Ellington's Memorandum and Recommendation ("M&R") to Dismiss Case, Dkt. No. 10. The Court is also in receipt of Plaintiff Virgil L. Jones ("Jones") Objections to the M&R, Dkt. No. 14.

Jones alleges he was denied access to the courts when prison officials confiscated CD's containing trial exhibits of forensic interviews. Dkt. Nos. 1, 7; Dkt. No. 10 at 3. The Magistrate Judge recommends dismissing claims for money damages against Defendants in their official capacities as barred by the Eleventh Amendment and dismissing remaining claims as frivolous or failing to state a claim under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

The Court reviews objected-to portions of the Magistrate Judge's proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1). Jones' objection is conclusory, general, and contains no arguments that the M&R has not already considered. *See* Dkt. No. 14; *Battle v. United States Parole Comm'n*, 834 F.2d 419 (5th Cir. 1987) (determining that a district court need not consider frivolous, conclusive, or general objections).

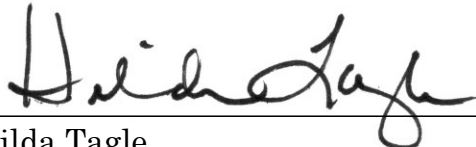
As the M&R states, the right to access to the courts does not guarantee access by any "particular methodology" rather it protects the capability of bringing challenges to sentences. *See* Dkt. No. 10 at 7; *Lewis v. Casey*, 518 U.S. 343, 356 (1996). Jones only alleges that the prison officers prevented him from having legal

materials in CD form, not that the prison prevented him from having those materials altogether. Dkt. No. 10 at 8.

In addition, as the M&R states, a plaintiff alleging a violation of his right to access the courts must show actual injury. *Lewis*, 518 U.S. at 351. That means showing a plaintiff has been, or is currently being, prevented from filing a legal claim. *See id.* Jones has not alleged a total denial of access to the materials he seeks nor that they are necessary to the claim he wishes to file. Dkt. No. 10 at 8; *see* Dkt. No. 14.

After independently reviewing the filings, the record, and applicable law, the Court **ADOPTS** the M&R, Dkt. No. 10, and **OVERRULES** Plaintiff's objections, Dkt. No. 14. Accordingly, the Court **DISMISSES WITH PREJUDICE** all claims. **DIRECTS** the Clerk of the Court to forward a copy of this Order to the manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov. Final judgment will enter separately.

SIGNED this 20th day of December, 2019.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge